

Before PARDEE, Circuit Judge, and MAXEY and PARLANGE, District Judges.

PER CURIAM. In the case made by the complainant's bill, Alfred N. Hehre, a citizen of the state of New York, and a member of the co-partnership of Felder & Hehre, is properly and necessarily a party defendant. The said bill shows a controversy within the general jurisdiction of the circuit court for the Southern district of Georgia, the complainant being a citizen of the state of Georgia, residing in the Southern district of said state, and all the defendants being either citizens of other states or aliens, and the matter in dispute exceeding in value the sum of \$2,000, exclusive of interest and costs. The appellants herein, having appeared in the circuit court, and entered motions to dismiss the suit for want of jurisdiction *ratione personæ*, and to dismiss the bill for want of equity, and to dissolve the injunction theretofore issued in the case for want of jurisdiction, and because no previous notice of application therefor was given, and because it was issued in term time, without requiring the complainant to give bond therefor, and that the complainant should execute a bond in such sum as the court might require to protect the defendants against all damages or losses which might be suffered by reason of granting said injunction, and to withdraw the said injunction because issued prematurely, and to discharge the receiver theretofore appointed in the case, must be held to have entered a general appearance to the bill, and thereby waived any privilege they might have had to object to being sued in the district in which the complainant resides, although, by the terms of the writing actually filed with the clerk, the appearance made was a limited appearance. Considering that the court, under the circumstances, had full jurisdiction of the case made by the bill, the issuance of an injunction was a proper exercise of the sound discretion vested in the chancellor, and the same may be said as to the appointment of a receiver, except that the record shows that a receiver was appointed simultaneously with the filing of the bill, and without notice to the parties whose possession was to be disturbed thereby. **Affirmed.**

LESLIE et al. v. LESLIE et al.

(Circuit Court, S. D. California. November 15, 1897.)

No. 736.

EQUITY PLEADING—MULTIFARIOUSNESS.

A bill which seeks to enforce the performance of a trust in real property, and also to quiet complainant's title to the same property, is multifarious.

This was a bill in equity by Ella L. Leslie and Charles C. Leslie against John and George H. Leslie, as trustees under the last will and testament, and codicil thereto, of George Leslie, deceased. The cause was heard on demurrer to the bill.

E. E. Keech and Guthrie & Guthrie, for complainants.
Brousseau & Montgomery, for defendants.

WELLBORN, District Judge. This suit was originally brought in the superior court of Orange county, Cal., and thereafter removed to this court, on account of the diverse citizenship of the parties. Two cases for equitable relief are separately stated in the bill, one being to enforce the performance of a trust in real property, and the second being to quiet the title of one of the complainants to said property. A demurrer to the bill on numerous grounds, including the one mentioned below, has been filed by the defendants since the removal of the cause. Under the state procedure, the complaint, as the pleading was there styled, would have been bad on account of a misjoinder of causes of action. Code Civ. Proc. Cal. § 427; *Reynolds v. Lincoln*, 71 Cal. 183, 9 Pac. 176, 12 Pac. 449. The general rules of equity practice which obtain in this court conduce to the same result. The bill is multifarious, in that it joins two distinct and unconnected grounds of equitable relief. 1 *Fost. Fed. Prac.* §§ 71-74. For this cause, and without passing upon any of the other objections to the bill, the demurrer is sustained, with leave to complainants to amend within 10 days, if they shall be so advised.

BROWN v. TILLINGHAST.

(Circuit Court, D. Washington, W. D. December 31, 1897.)

1. PAYMENT—RECOVERY ON GROUND OF MISTAKE—SUBSCRIPTION TO NATIONAL BANK STOCK.

A payment made for stock of a national bank under an erroneous belief that all of an increased issue of stock authorized by the stockholders, and of which the stock paid for formed a part, had been sold, and the subscriptions therefor had thus become binding, is not voluntary, and the money may be recovered back, though the facts might have been learned by the exercise of greater diligence and care.

2. NATIONAL BANKS—INSOLVENCY—ASSESSMENT—PARTIES.

The comptroller of the currency and the treasurer of the United States are not necessary parties defendant in an action against the receiver of an insolvent national bank to recover an assessment made by the comptroller, and paid by the plaintiff under an erroneous belief that he was a stockholder.

Suit in equity by H. W. Brown against Phillip Tillinghast, as receiver of the Columbia National Bank of Tacoma, to establish plaintiff's claim as a creditor against the Columbia National Bank for the amount of \$6,250, paid on his subscription for increased capital stock of the banking association, and also to establish a claim as a preferred creditor against the assets for the amount of \$3,050 paid upon an assessment ordered by the comptroller of the currency against the stockholders of said bank. Demurrer to the bill of complaint overruled.

T. W. Hammond, for plaintiff.
Phillip Tillinghast, in pro. per.

HANFORD, District Judge. In the case of *Matthews v. Bank*, 79 *Fed.* 558-560, this court decided that the vote of the stockholders of the Columbia National Bank of Tacoma to increase the capital stock